Consequently, appellant was convicted on both charges of unlawful possession of a .32 Smith & Wesson Long revolver, contrary to section 57(1)(a) and section 57(1)(b) of the Internal Security Ordinance, 1960 respectively, and sentenced to death. He appealed against both conviction and sentence.

It was alleged that the learned judge admitted and took into consideration inadmissible and highly prejudicial evidence resulting in a miscarriage of justice. This matter must be carefully examined. It is proper to bear in mind that we are not dealing with a jury trial or with a direction to a jury, but with a judge's expression of his views. We do not think it is wrong for the police to use photographs before arrest to assist them in ascertaining the proper person to be arrested, but the photographs should not be tendered in evidence by the prosecution. Thus, in *Girdari Lall and Others* v. *Public Prosecutor*[1] the Court of Appeal quashed the conviction because a police photograph of an accused was put in evidence. We see no reason why counsel for appellant should complain about what he called prejudicial evidence when these arose as a result of cross-examination.

During the trial the learned judge was informed by the learned Deputy Public Prosecutor and the court staff that appellant spat at a prosecution witness. Appellant was asked to apologise but he refused. The learned judge decided to defer taking any action on such contemptuous conduct in the court. But, counsel for appellant submitted that the learned judge should have heard the appellant on the matter, and complained that the learned judge did not inquire further into the matter during the trial. In his written judgment, the learned judge made clear that the appellant's defiance of a court ruling could be the subject of contempt proceedings, but he took no further action on the matter as appellant was facing charges punishable with death. Had the learned judge decided to take cognizance of the offence he would surely give appellant the opportunity to defend himself. The matter did not end there as counsel for appellant alleged that because of the incident the learned judge was prejudiced against appellant. Such serious allegation should not be lightly made. We find no substance in this allegation. The learned judge took pains to explain that he gave no thought to the incident in coming to his decision regarding the guilt of the appellant. We agree with the learned judge that if such kind of conduct should cause a court to halt proceedings and order a new trial, then it would create a serious problem to the administration of justice.

The learned judge rightly rejected the argument that the prosecution should tender the cautioned statement otherwise the presumption under section 114(g) of the Evidence Act would be against prosecution. It is strictly a matter for the prosecution to decide whether to use the cautioned statement or not. If the prosecution consider that the evidence was sufficiently strong to establish guilt, they are entitled to use their discretion not to introduce the cautioned statement. The production of the cautioned statement tends to prolong a trial unnecessarily as invariably its admissibility would be challenged resulting in a trial within a trial. But, the defence could cause the prosecution to introduce it if they consider it would assist the accused. In this case although the defence was aware of the existence of the cautioned statement no step was taken to cause its production.

This is a case where, even if we were to decide the point raised in favour of appellant, on the evidence we find no substantial miscarriage of justice has occurred.

Appeal dismissed.

Solicitors: *Kumar, Chan & Chia.*

LEE WENG SANG v. PUBLIC PROSECUTOR

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman and Chang Min Tat F.JJ.) September 5 and November 11, 1977]

[Kuala Lumpur — Federal Court Criminal Appeal No. 22 of 1977]

Criminal Law and Procedure — Possession of pistol and ammunition — Accused pleading guilty to charge under Firearms (Increased Penalties) Act, 1971 — Appeal against sentence — Retrial ordered — Public Prosecutor applying for committal to High Court on charges under Internal Security Act, 1960 — Cautioned statement by accused — Admissibility of — Judicial notice of proceedings at earlier trial — Admission of accused — Record of proceedings not put in — Criminal Procedure Code (F.M.S. Cap. 6), s. 371(1).

In this case the facts were that a police party raided a room in a house and found the appellant and another Chinese seated in the room. Near them was a packet containing a pistol, ammunition and a hand grenade. The appellant and the other person were originally charged for possession of the pistol and hand grenade and possession of the ammunition but subsequently the charge against the other person was amended to one of being found in the company of the appellant who was in unlawful possession of the pistol and hand grenade. The appellant pleaded guilty before the Special Sessions Court and was sentenced to 7 years and 6 strokes on the first charge and on the second charge to three years. The appellant appealed against the sentence but at the hearing of the appeal the conviction of the appellant was set aside in revision and a retrial was ordered. The appellant was then charged under the same charges but subsequently the Public Prosecutor applied for a committal to the High Court on charges on the same facts under the Internal Security Act, 1960. The appellant claimed trial. At the trial in the High Court, the substantial evidence against the appellant that he was found together with the other Chinese in a room in which were the forbidden articles in question was augmented by evidence of an alleged admission by the appellant (1) that the appellant had while in that room, that is at the moment of arrest or shortly afterwards, admitted that the articles found belonged to him; (2) the evidence of a cautioned statement made on September 18, 1974 and another cautioned statement made on January 23, 1975 (the second occasion being after his conviction in the Special Sessions Court), and (3) the first proceedings in the lower court in its entirety. The appellant was found guilty and sentenced to death. He appealed to the Federal Court.

Held: (1) the Public Prosecutor was entitled under section 371(1) of the Criminal Procedure Code to amend the charges from the Firearms (Increased Penalties) Act to the charges under the Internal Security Act and in any event no appeal was preferred against the decision of the High Court on this point;

(2) although the police witnesses stated at the trial before the High Court that the appellant had admitted that the articles belonged to him, they admitted in cross-examination that they had not said so in the lower court in the trial against the other Chinese. In view of this cross-examination it was the duty of the trial court to consider the differences in the evidence of the police witnesses in the Sessions Court and in the High Court and to come to a finding on the oral evidence before it. The duty of considering the defence or at least this aspect of it, was not discharged in this case;

(3) it is the clear duty of counsel to indicate to the trial court his objection as to the admission of any statement by an accused if on the instructions given to him the statement was unlawfully induced or obtained and the proper time to do this would be when the prosecution seeks to introduce the statement. In this case notwithstanding the failure to challenge it directly but in view of the nature of the cross-examination of the police witnesses a trial within a trial should have been held to determine the admissibility or otherwise of the first cautioned statement;

(4) the learned trial judge in this case was in error in taking judicial notice of the proceedings in the lower court (which had not been put in either by the prosecution or the defence);

(5) there was a question as to whether the second statement was made at the time and place alleged but the learned trial judge in his grounds of decision failed to direct his mind to the circumstances relating to this statement;

(6) on the evidence the prosecution case against the appellant was not merely that of proximity leading to the inescapable inference that he was in possession but that of factual possession on the strength of his admission. The inference is not inescapable in view of the relation of the other Chinese to the offences which was left unexplained at the trial. Evidence of the appellant's admission had not been properly introduced and it is abundantly clear from the grounds of decision of the learned trial judge that in convicting the appellant he had relied heavily on such evidence.

Cases referred to:-

(1) *Lee Weng Seng* v. *Public Prosecutor* [1976] 1 M.L.J. 82.

(2) *Long bin Samat & Ors.* v. *Public Prosecutor* [1974] 2 M.L.J. 152.

(3) *Johnson Tan Han Seng* v. *Public Prosecutor* [1977] 2 M.L.J. 66.

(4) *Yong Pak Yong* v. *Public Prosecutor* [1959] M.L.J. 176.

(5) *Narasingerji Gyanagerji* v. *Ponuganti Parthasaradhi* (1924) 51 I.A. 305.

(6) *Public Prosecutor* v. *Choo Teck Hong* [1960] M.L.J. 218.

(7) *R.* v. *Rosser* 7 C. & P. 648; 173 E.R. 284.

(8) *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor* [1977] 2 M.L.J. 155, 169-171.

FEDERAL COURT.

L. Fernandez for the appellant.

Datuk Haji Abdullah bin Ngah (Deputy Public Prosecutor) for the respondent.

Chang Min Tat F.J. (delivering the judgment of the Court): A police party raided a room in a house. Inside that room they found the appellant and another Chinese Wong seated. Near them was a packet. It contained a 9mm pistol, 54 rounds of live 9mm ammunition and a hand grenade. That discovery was the beginning of a long and somewhat chequered history of prosecution for the appellant. It concluded with his conviction in the High Court on 3 charges under sections 57(1)(a) and (b) of the Internal Security Act 1960 and sentence to death.

First, both the appellant and this man Wong were jointly charged with the offence of being in unlawful possession of the pistol and grenade, an offence punishable under section 8 of the Firearms (Increased Penalties) Act 1971 (as amended by Act 256/71) and further with being in unlawful possession of ammunition, an offence under section 3(1) and punishable under section 9(a) of the Arms Act No. 21/60. Both charges specified July 20, 1974, the date of the raid. The two were eventually brought before the Special Sessions Court on September 19, 1974. On that day however an amended charge was tendered against Wong. Under this amendment he was charged with being found in the company of the appellant who was in unlawful possession of the pistol and grenade, an offence under section 9 of the Firearms (Increased Penalties) Act 1971. There is no record whether in the circumstances of the amendment of the charge against Wong, the joint charges against the appellant, now alone, were amended. The records merely showed that on this first appearance in court, the appellant and Wong were charged, the charges being read over and explained to them, and that Wong claimed trial, while the appellant pleaded guilty. He was recorded as stating that he understood the nature and consequences of his plea. But it would not appear that the charges against him were amended. They should, of course, have been amended by omitting the word jointly. The case against the appellant was then adjourned to October 10, 1974 for facts and sentence. After two productions in court for the purpose of obtaining orders of remand, the appellant and Wong appeared in court on October 10, 1974. The appellant maintained his plea of guilty. The facts given by the prosecuting officer related to the raid and the discovery of the appellant and Wong in a room rented to them and the recovery of the pistol, hand grenade and 53 (not 54) rounds of ammunition. The pistol was stated to be a Star Pistol 9mm/.38 calibre, loaded with 9 rounds of live .38 ammunition in a magazine. The remaining 44 rounds of .38 ammunition were found in a bag in which also was a live grenade.

The appellant admitted all the facts given. He was convicted and on the 1st charge was sentenced to 7 years and 6 strokes and on the 2nd charge, to 3 years. The sentences were made to run concurrently.

The case against Wong was adjourned. After weekly remands, it was heard on March 3, 1975 and concluded on March 12, 1975.

The appellant appealed to the High Court, the appeal by reason of section 305 Criminal Procedure Code being limited only to the sentence. The appeal was dismissed, but the appellant had the further misfortune of having his plea of guilty set aside in revision on the ground mainly that the facts given failed to assert that the pistol and grenade was serviceable, serviceability being an essential ingredient for an offence under section 8 of the Firearms (Increased Penalties) Act 1971: see the judgment in *Lee Weng Sang* v. *Public Prosecutor*.[1] A retrial was ordered.

The retrial was also held under the same charges. There were again several appearances in court and several remands. The appellant did not choose this time to plead guilty. Then at the last appearance in the Special Sessions Court came the final blow. The prosecution asked for a committal to the High Court on charges, on the same facts, under the Internal Security Act 1960. On the consent of the Public Prosecutor being tendered, the order for committal was made.

The appellant was on the facts chargeable under either the Firearms (Increased Penalties) Act 1971 or

the Internal Security Act 1960. The prosecution however elected in the beginning to proceed under the former. The reason for the change in its decision on this last appearance at the Special Sessions Court is perhaps not difficult to discern. Shortly before, on October 4, 1975, the Essential (Security Cases) Regulations 1975 later repealed and re-enacted, were passed.

When it was decided to proceed under the Internal Security Act against the appellant, his counsel promptly challenged the alterations in the charges and, when the application was turned down, appealed to the High Court. The learned High Court Judge, who heard the appeal, was the same judge who had heard and disposed of the first appeal. He again dismissed the appeal.

The charges under the Internal Security Act against the appellant eventually came up for hearing in the High Court at Ipoh. He was tried before the same judge. In the event, he was found guilty on all the charges and sentence of death was passed. From the convictions and sentence he now appeals to this court.

It was again contended at the appeal before us that the learned trial judge erred in law in the second appeal in holding that the Public Prosecutor was entitled under section 371(1) Criminal Procedure Code to amend the charges from the Firearms (Increased Penalties) Act to the charges under the Internal Security Act. That worked, it was contended, to the great prejudice of the appellant. So far as procedure is concerned, this point was decided in the High Court at the second appeal and an appeal lay, under the amendment to section 50 of the Courts of Judicature Act 1964 to this court from the decision of the High Court on appeal. If it was thought there was any validity in this contention, an appeal should have preferred. But there was no appeal.

Learned counsel for the appellant frankly conceded that authority was against him. In the first place, the decision of the prosecution in the beginning to proceed under the Firearms (Increased Penalties) Act which carries a much lesser sentence of imprisonment is well within its discretion: *Long bin Samat & Others* v. *Public Prosecutor*.[2] On the other hand, neither is the Public Prosecutor acting outside his powers if he prefers a charge, not under the Firearms (Increased Penalties) Act but under the more severe Internal Security Act: *Johnson Tan Han Seng* v. *Public Prosecutor*.[3] The point taken in this appeal is however that by electing to prefer a charge against the accused person which carries the death penalty in preference to a charge which carries a mere sentence of imprisonment, the Public Prosecutor was in fact subjecting the appellant to a "greater punishment than was prescribed by law at the time the offence was committed," contrary to Article 7(1) of the Constitution. However even by merely applying first principles, this submission, in our opinion, cannot be right, for the simple reason that at the time the relevant offences were committed in 1974, the Internal Security Act 1960 had been enacted and was already in force and the appellant was liable to be charged under it, and if found to be guilty, liable to be sentenced to the penalties prescribed therein. The appellant was never at any time subjected to a greater punishment than was prescribed by law at the time the offences were committed.

At the trial in the High Court, the substantial evidence against the appellant that he was found together with the other Chinese Wong in a room in which were the forbidden articles in question, was augmented by evidence of an alleged admission by the appellant (1) that the appellant had while in that room, that is at the moment of arrest or shortly afterwards admitted that the articles found belonged to him; (2) the evidence of a cautioned statement made on September 18, 1974 (Exhibit P16) and another cautioned statement on January 23, 1975 (Exhibit P17); and (3) the first proceedings in the lower court in their entirety (Exhibit D18).

It was the evidence of the prosecution that when PW2 Chief Inspector S. Maniam and his police party raided the room, he asked both the accused and Wong if they had any licence for the firearms and ammunition. The answer was no, and then the accused admitted that all the items belonged to him. Wong, the other person, kept silent. Inspector Maniam gave evidence that the appellant made his admission in the words "Saya punya." PW3 Det. Sergeant Mohd. Ali, a member of the raiding party, said substantially the same thing, the differences being that the appellant only answered after being asked two or three times and then what he said was "Saya punya barang." The prosecution did not claim that when the appellant was asked this question, any caution had been administered to him, but under Regulation 20(1) of the Essential (Security Cases) Regulations 1975, the evidence of a statement by the accused in a security trial is nevertheless admissible against him whether or not a caution has been administered. Later when the accused changed counsel, his new counsel asked to recall both these witnesses for further cross-examination and challenged their evidence in cross-examination.

In the course of his cross-examination, Inspector Maniam was confronted with his evidence in the lower court which he gave in the trial against Wong affecting the appellant. In that case all that he testified was that he enquired from the two persons in the room whether they had any licence to possess the gun and ammunition and his evidence was that they had no licences and could not produce any. There was no evidence whatsoever that he asked both of them whether the gun and ammunition belonged to them and no evidence that the appellant had acknowledged that the articles were his. His evidence, which appears at pages 15-18 of the written record of proceedings in the Sessions Court was then tendered in evidence. The note of the learned trial judge was: "Counsel tenders certified copy of notes of evidence — D18 pages 15, 17 and 18 of notes." Sergeant Mohd. Ali was however not confronted by any previous testimony for the simple reason that he was not a witness in the lower court.

We pause at this stage to say that in view of this cross-examination, it should be the duty of the

trial court to consider the differences in the evidence of these police witnesses in the Sessions Court and in the High Court and to come to a finding on the oral evidence before it. It is however to be noted that the duty of considering the defence, or at least this aspect of it, was not discharged.

The first cautioned statement by the appellant was introduced through PW4 Mohd. Salleh, an officer whose rank did not appear on the record: see Regulation 21(1)(a). In his cross-examination by the first counsel, he was asked some vague questions about the history of the appellant from the time of his arrest until the first statement was recorded on September 18, 1974, a period of some two months. During this time, the appellant was under interrogation by the Special Branch and, if there was any ill-treatment or unlawful persuasion to get him to give this statement, it must conceivably be from the Special Branch. Predictably, this Mohd. Salleh testified in answer to questions put to him by counsel that he did not know whether during the period of his interrogation by the Special Branch, the appellant was kept in a dark room or had been locked up for interrogation for a period of six weeks or whether the appellant had been promised anything to give that statement. The interpreter, PW5 Chee Ah Chong, was also asked whether the accused had complained to him of any threat, inducement or promise. His answer was no and gave the reason. That was because he, the appellant, was not asked. On this evidence, the cautioned statement was marked P16. There was no direct challenge as such as to its admissibility.

We feel obliged to say that it is the clear duty of counsel to indicate to the trial court his objection to the admission of any statement by an accused if on the instructions given to him, the statement was unlawfully induced or obtained and that the proper time to do this would be when the prosecution seeks to introduce the statement. This objection would indicate to the court the necessity to hold a trial within a trial. The sad fact about this case is that the then counsel for the appellant failed to indicate to the court that he was instructed to take objection to the admission of this cautioned statement made on September 18, 1974. In consequence, no trial within a trial was held. We appreciate, of course, that the fault was not entirely counsel's as he was apparently then labouring under the judgment of another High Court that, notwithstanding the provisions of section 24 of the Evidence Act 1950 any statement even if obtained by threat, inducement or promise was in a security trial, by reason of the provisions of Regulations 21 and 17, admissible. That judgment has now been overruled: *Johnson Tan Han Seng* v. *Public Prosecutor, supra.* The decision of the Federal Court however was given after this trial was held. If he was labouring under the belief that that judgment of the High Court was binding on him, it is understandable that he failed to challenge it. But neither the learned Deputy Public Prosecutor who prosecuted this case nor the learned High Court Judge who heard this case was under such an apprehension or even under any idea that the other judgment was binding on the court. The proof of this lay in the cross-examination of the appellant himself. When the prosecution sought to introduce the second cautioned statement made on January 23, 1975 in an apparent effort to impeach the accused's credit, there was also no direct challenge as such by the defence. But there was a challenge to its genuineness. It was said to be fabricated. When it was clear from the evidence of the accused that he challenged this second statement on the grounds of impropriety, the Deputy Public Prosecutor suggested to the court to hold a trial within a trial to determine the admissibility or otherwise of this second statement, P17. Why a trial within a trial was not held in respect of the first cautioned statement must now remain an unsatisfactory aspect of the whole case.

We are of the view that notwithstanding the failure to challenge it directly but in view of the nature of the cross-examination of Mohd. Salleh and Chee Ah Chong the interpreter, a trial within a trial should have been held to determine the admissibility or otherwise of the first cautioned statement. This became very apparent during the appellant's examination-in-chief when he referred specifically to threats, assaults and promises. Since this was not done, we must regretfully rule that P16 is not admissible.

Apart from the necessity to hold a trial within a trial where a statement is contended as being involuntary, there is another reason for our grave reservation regarding its admissibility.

The learned trial judge thought P16 entirely voluntary, being completely satisfied with the evidence of Mohd. Salleh and Chee Ah Chong. But it is clear that in his Grounds of Decision, he arrived at this conclusion not merely on the oral evidence before him but because, as he expressly declared, he took judicial notice of the proceedings in the lower court. It is beyond argument that in the judgment of the learned trial judge, the admission of the appellant in those proceedings was fatal to any suggestion made before him that the statement was other than voluntary. But the fact is the record of proceedings does not come within the ambit of section 57 of the Evidence Act 1950 and therefore the admission is not a fact of which the court may even, not must, take judicial notice of. The list of matters of which the court may take judicial notice of is of course not exhaustive. But while there does not appear to be any statutory limitation to what a judge may take judicial notice of, it is clear from the authorities that, in order to avoid a conflict between the ban on a judge importing his own knowledge into a case and what he may take judicial notice of, there is a limitation to "what is notorious, (of) what everybody knows": see *Yong Pak Yong* v. *Public Prosecutor.*[4] Though Good J. in that case restricted his decision to the matter of sentence, it is quite obvious by his reference to the Privy Council case of *Narasingerji Gyanagerji* v. *Ponuganti Parthasaradhi*[5] in which their Lordships took judicial notice of the existence of a particular class of contracts in India from their knowledge of cases coming before their Lordships' Board on appeal, that the limitation is of general application. Thus, Ambrose J. in *Public Prosecutor* v. *Choo Teck Heng*[6] took judicial notice of the fact that Mountbatten Road in Singapore was a major

road. *Ratanlal's* Evidence (11th Edn.) at page 564 cites *R.* v. *Rosser,*[7] where the reference is to "spheres of everyday knowledge and experience." We do not, with respect, consider therefore that it was right for the learned judge to take judicial notice of the admission of the appellant in the first proceedings in the Sessions Court, apart from the fact that in the subsequent proceedings, the admission was retracted.

Whether or not the record of proceedings was admissible under Regulation 21 of the Essential (Security Cases) Regulations is not the point in this case. It was never put in, either by the prosecution or the defence. The prosecution evidence at the trial contained no reference to it. The defence merely put in certain pages only containing the evidence of one particular witness. What was marked as an exhibit D18 were those pages.

The use of the record under the circumstances of the case is, therefore, with respect, regrettable. On the other hand, if it is argued that the record was never used, it must mean a concession that the learned trial judge imported into this trial his personal knowledge gained from the previous appearances of the appellant before him. With respect, that is equally regrettable.

There would therefore appear to be some foundation for the suggestion thrown out at the trial that the learned trial judge should disbar himself from holding the trial and the complaint at the appeal of prejudice on his part.

We would make it clear that, in our decided view, just because a trial judge had previously heard a case against the appellant, even on the same facts, he is by that fact alone not disqualified from hearing the subsequent case. He should normally be expected to hold the scales of justice evenly and decide the case fairly on the evidence before him. But the evidence before him must be the evidence led in the trial. No reference can properly be led to facts or evidence dehors the court. It is therefore a matter of regret that under a mistaken idea of its powers, the court took judicial notice of something which it could not properly do.

As for the second cautioned statement, no point was taken against its admissibility on the ground that the caution administered to the appellant was the one under section 112 of the Criminal Procedure Code and not the proper one under section 75 of the Internal Security Act or under section 113 of the Criminal Procedure Code (they are similar). Under this caution, the person being interrogated is bound to answer all questions put to him truthfully. But there is a proviso that he need not incriminate himself. It has now been settled by this court on June 10, 1977, in Federal Court Criminal Appeal No. 19/1976, *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor*[8] that notwithstanding this caution but because of the proviso, and having regard to section 29 of the Evidence Act, it does not become inadmissible merely because of the fact that it was made in answer to questions which he need not have answered. That was a case under the Prevention of Corruption Act No. 57. Here Regulation 21(1)(e) is an additional ground for its admissibility. The point that was taken, however, was that the statement as recorded was never given. The appellant only admitted to the fact that he was asked whether his first statement was correct. As noted before, a trial within a trial was held.

The challenge to its existence was made on the circumstances prevailing at that time. They were: on January 23, 1975 when this statement was alleged to be recorded, the appellant had already been convicted and sentenced in the Sessions Court. There were no other charges against him. The order in revision was still in the future. There was the case against his friend Wong, but this case did not depend on any evidence from the appellant. If, as might be expected, the appellant appeared as a witness for Wong, he would be confronted with his earlier statement. What was the necessity for this Mohd. Salleh to travel all the way from Ipoh to Seremban with a Malay detective who speaks Cantonese to take another statement from the appellant which was substantially the same as the first and which added nothing or was in any way pertinent to any investigation in hand? It was not even sought to learn more. As the police witnesses themselves testified, it was merely to confirm. What then was the necessity for it?

If it were a mere question of a finding of fact dependent on the credibility of the witnesses whom the judge had heard, it will be wrong for this court to differ. But the finding that the statement was given, was not dependent entirely on the credibility of the witnesses. Again, if it was a mere question of a proper and valid conclusion from a consideration of all the evidence before it, this court will not differ, but unfortunately the learned trial judge in his Grounds of Decision failed to direct his mind at all to those circumstances and it is now impossible to say whether had he done so, he would nevertheless have come to the finding of fact that the statement P17 was made to Mohd. Salleh at the time and place in question.

On the evidence before the court the prosecution case against the appellant was not merely that of proximity, leading to the inescapable inference that he was in possession but that of factual possession on the strength of his admission. The inference is not inescapable in view of the relation of Wong to the offences which was left unexplained in the trial. Evidence of the appellant's admission had however not been, for the reasons set out, properly introduced, and it is abundantly clear from the Grounds of Decision of the learned trial judge that in convicting the appellant, he had relied heavily on such evidence. In all the circumstances of the case, we are not confident that had the learned trial judge properly directed himself, he would have nevertheless convicted.

We therefore allow the appeal and set aside the conviction and sentence.

Appeal allowed.

Solicitors: *L. Fernandez & Co.*